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PART II—Section 3

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 30th September, 1957/8th Asvina 1879 Saka

S.R.O. 3276.—Whereas the election of Shri N. P. Shanmugham as a member of the House of the People from the Tindivanam Constituency has been called in question by an election petition presented under Part VI of the Representation of the People Act, 1951, (43 of 1951) by Shri V. Munuswamy, son of A. Veeraswamy, resident of 19-A, East Anuwar St., Villupuram, South Arcot District;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 80 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL (DISTRICT AND SESSIONS JUDGE
OF CHINGLEPUT

Present:—Sri S. Rangarajan, M.L., Member, Election Tribunal, (District and Sessions Judge).

Saturday, the 31st day of August, 1957

ORIGINAL PETITION No. 8 of 1957

(Election Petition No. 92 of 1957 before the Election Commission of India,
New Delhi)

Between:—

V. Munuswamy—*Petitioner.*

And:—

1. N. P. Shanmugham.
2. V. R. Nagarajan.
3. V. Gopala Goundar.
4. M. A. Natesan—*Respondents.*

This petition coming on for final hearing on the 29th day of August, 1957, before me in the presence of Sri D. K. Sampath, Advocate for the petitioner and of Sri N. Krishnaswami Reddi and Sri V. Varada Reddi, Advocates for the 1st

respondent and respondents 2 to 4 being absent, and having stood over for consideration till this day, this Tribunal made the following order:—

ORDER

This is an Election Petition challenging the election of the 1st respondent, who was the successful candidate at the election, which took place on 1st March 1957, for the Tindivanam Single Member Parliamentary Constituency, South Arcot District. The 2nd respondent was another rival candidate. Respondents 3 and 4 withdrew their nominations. The 1st respondent was declared elected, he having secured 73,737 votes, the petitioner 65,012 and the 2nd respondent 64,082.

2. The 1st respondent's election is challenged on the ground that he orally attacked the personal character and conduct of the Petitioner and stated to the persons mentioned in Schedule A that the petitioner was not a Vannia by caste, but belonged to the "Kurava", hereditary criminal, tribe. The electorate largely consisted of Vannias. Printed leaflets like Ex. A1 "were circulated widely" among the electorate in the Constituency and in particular were sent by post to the persons mentioned in Schedule B, annexed to the petition. It was also averred that those leaflets were published and distributed by one B. M. Swamy of Madras, with the consent of the returned candidate and his agent on 23rd February 1957 and on other days in Nagalapuram, Tindivanam town. The 1st respondent had thus committed corrupt practices within the meaning of Section 123 (4) and also within the meaning of Section 123 (3) of Act 43 of 1951, for the respondent appealed to the electorate not to vote for the petitioner on the ground of caste. The election of the 1st respondent is sought to be declared void under Section 100(1)(b) of the Act. It was further stated that the "statements" made by Swamy were made at least in the interest of the returned candidate and as the corrupt practice was wide spread, it has materially affected the result of the election.

3. Respondents 2 to 4 were absent. The 3rd respondent gave evidence on behalf of the petitioner and was examined as P.W. 1.

4. The notice sent to the 2nd respondent was not sent to this Tribunal by the Election Commission, because it was stated that the acknowledgement or even the notice sent to the 2nd respondent was not returned to the Election Commission. The Election Commission informed this Tribunal that the postal authorities were being addressed. The result of it is not known. But the petitioner filed an affidavit stating that the 2nd respondent was served personally with the notice sent by the Election Commission and that he was aware of the petition. On foot of the said affidavit which was not challenged by the 1st respondent, the enquiry proceeded. Even during the course of the enquiry, I ordered, by way of abundant caution, notice on 5th August 1957 to the 2nd respondent to appear on 12th August 1957. It was returned and received in this Court on 19th August 1957 as "not found". Another notice was ordered and sent to him on the same day to a different address furnished by the petitioner to appear on 23rd August 1957. In spite of waiting for it till today that notice has not been returned. 2nd respondent was called on each date of hearing and he was absent. In the circumstances there is no point in waiting for the notice any further.

5. The 1st respondent denied that he made any allegation against the petitioner in the course of the election propaganda as stated in the petition. He stated that he was not aware of the antecedents of the petitioner and that there was no occasion or necessity to make such a propaganda. He denied that he knew any one, by name B. M. Swamy of Madras, or that he had anything to do with him. The 1st respondent surmised that the leaflets must have been introduced by interested parties solely with a view to set at naught the election of the 1st respondent.

6. The following issues were framed:—

1. Whether the 1st respondent or any other person with his connivance or that of his agent published or caused to be published Ex. A filed with the petition?
- 1(a) Whether the 1st respondent has committed a corrupt practice within the meaning of Section 123(4) of the Representation of the People Act, 1951, by making the allegations against the petitioner as stated in paragraphs 7 and 8 of the petition?
2. Whether the 1st respondent or any other person with his connivance or that of his agent systematically appealed to any person to vote or refrain from voting on the ground of community alone?

7. Both parties were asked to file lists of witnesses, which they did. Since the 1st respondent stated that B. M. Swamy of Madras was a fictitious person, a memo containing his address was filed on 22nd July 1957 after notice to the other side. The said B. M. Swamy has not been examined.

8. Before discussing the issues, it will be well to notice the relevant provisions of Act 43 of 1951. According to Section 100(1) of the Act, "Subject to the provisions of sub-section (2), if the Tribunal is of opinion.....(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, the Tribunal shall declare the election of the returned candidate to be void." It also provides that if the Tribunal is of opinion "(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected..... (ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent..... the Tribunal shall declare the election of the returned candidate to be void."

9. The corrupt practices have been defined in Section 123 of the Act and we are now concerned only with Clauses 3 and 4. They read as follows:—

"(3) The systematic appeal by a candidate or his agent or by any other person, to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election.

(4) The publication by a candidate or his agent or by any other person, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

10. It is thus seen that a corrupt practice of either kind mentioned in Clauses 3 or 4 of Section 123 of the Act can be committed by a candidate or his agent or by any other person. If the said corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent, the election of the returned candidate has to be held void. But if the corrupt practice was committed in the interests of the returned candidate by a person other than the candidate or his election agent or a person acting with the consent of such a candidate or his election agent, then before the election of the returned candidate could be declared to be void, it must be shown that by reason of such corrupt practice or practices, the result of the election in so far as it concerned the returned candidate has been materially affected.

11. Issue No. 1 related to the printing and publication of Ex. A by the 1st respondent or by any other person with the connivance of the 1st respondent or his agent. But before the enquiry started, both sides considered that it was necessary to have another separate issue regarding the allegations in paragraphs 7 and 8 of the petition about the commission of corrupt practice within the meaning of Section 123(4) of the Act (i.e.), about the alleged oral statements to the persons mentioned in Schedule A. So issue 1(a) was also raised. Issue 2 relates to the corrupt practice within the meaning of Section 123(3) of the Act, (i.e.), about the systematic appeal to the voters on the ground of caste.

12. I consider that it would be convenient to group all the three issues and discuss them under two separate heads:—(1) the alleged oral statements and (2) the printing, publication and distribution of leaflets like Ex. A-1.

13. (1) *The alleged oral statements*:—The allegations with reference to the oral statements are contained in paragraphs 7 to 11 of the petition. The 1st respondent stated to several voters in the course of his election propaganda as follows:—The petitioner was the son of a drunkard called *Kurava Veeraswami*. The petitioner cleverly cheated some persons in Madras into starting a *Thirukural* Press, misappropriated several thousands of rupees and absconded with the

money. The petitioner along with one Radhakrishnan and another started a firm of Engineering Contractors. The petitioner misappropriated Rs. 10,065 out of the funds of the firm. The two brothers of the petitioner were Police Constables and that they were dismissed for misconduct. The petitioner was born of low caste and in a family noted for its degenerate actions. The petitioner was not a vanna, as he claimed, but belonged to a hereditary criminal tribe "Kurava".

14. The above statements were alleged to have been made by the 1st respondent to several persons in the course of his personal propaganda all over several villages in the Constituency and in particular to the persons mentioned in Schedule A. The statements were untrue to the knowledge and belief of the 1st respondent. These statements related to the personal character and conduct of the petitioner. They were made with a view to prejudice the prospects of the petitioner in the election. The 1st respondent, therefore, committed a corrupt practice within the meaning of Section 123(4) of the Act.

15. One looks in vain into the abovesaid paragraphs or even any other portion of the petition for an allegation that any oral statement was made by a person other than the respondent to any one. It has also to be noticed that the petitioner made no allegation in the petition, as he did for the first time from the witness box, that he heard the 1st respondent mention anything about his personal character and conduct. It is natural to expect that if he had personally known any such instance, he would have mentioned it prominently in the petition. It was not stated which fact was personally known to the petitioner and which fact was not known to him. The verification merely states that "the facts stated in paragraphs 6 to 15 are correct to the best of his knowledge, information and belief." This is hardly the way in which the verification would have been made, if the petitioner knew the facts which he now says were known to him personally.

16. It has also to be noticed, that as required by Section 83(b), the election petition did not set forth the full particulars of any corrupt practice, including as full a statement as possible of the names of the parties, who are alleged to have committed such corrupt practices and the date and place of the Commission of each of those practices. A perusal of Schedule A shows that the names of fifteen persons have been mentioned as belonging to various places. Despite the statement in paragraph 9 of the petition "at the same time and place and to the same persons and others", the places where the alleged corrupt practices were committed, have not been mentioned at all. The addresses of the 15 persons have however been mentioned in Schedule A. But the addresses thus mentioned could not be taken to be places where the alleged corrupt practices were committed, because at least so far as Nos. 4, 7, 8 and 9 are concerned, Villipuram has been mentioned and Villupuram is admittedly outside the Tindivanam Constituency. It could not be stated that the petitioner referred to any corrupt practice having been committed outside the Constituency. For this reason alone, the addresses given in respect of the witnesses mentioned in Schedule A could not be taken to be the places where corrupt practices were committed. It was only mentioned in paragraph 10 that the returned candidate made those statements to several persons and "all over several villages in the Constituency and in particular to the persons whose names and addresses are given separately in Schedule A." Some dates however have been mentioned as against each witness. But the places where the corrupt practices are alleged to have been committed have not been mentioned. Even here, it may be noticed, that so far as Nemi Doss (P.W.8)—item 1 in Schedule A—is concerned, he is also mentioned in B Schedule B. In Schedule B, the dates when the persons mentioned therein were examined, by post have been given. Barring Nemi Doss (P.W.8), the persons mentioned in Schedules A and B are different. Among the persons mentioned in Schedule A, only five persons, viz., P.Ws. 8, 10 to 12 and 14 have been examined. Except in the case of P.W.8, who was mentioned both in Schedules A and B none of the persons mentioned in Schedule B are stated to have been persons to whom any oral representation was made by the 1st respondent, there being no question at all (according to the petition) of any one other than the 1st respondent having made such oral representations. Out of the 11 persons mentioned in Schedule B, five persons (P.Ws. 1, 2, 8, 9 and 13) were examined.

17. P.W. 3, who claimed to be related to B. M. Swamy, swore that B. M. Swamy came to his house at Tindivanam at about 10-30 p.m. four or five days prior to the polling day, characterised the petitioner as a dishonest fellow without integrity and left for the 1st respondent's place exhorting P.W.3 to work for the 1st respondent. Before leaving P.W.3's house, Swamy gave him a leaflet similar to Ex.A—1. P.W.3 lives in Tindivanam. Barring P.W.3, no one else spoke about any oral representation by B. M. Swamy. It has not been expressly stated anywhere in the petition that Swamy made any statement regarding the petitioner beyond merely distributing pamphlets, which is the only allegation in paragraph 13.

18. In Paragraph 17, it is stated as follows:—

"The petitioner further states that in any event the statements made by the candidate and by the said Swamy with the consent of the returned candidate amount to a corrupt practice made in the interest of the returned candidate, etc.,"

It is not to be assumed that any further facts have been mentioned in paragraph 17 or in any other paragraphs subsequent to paragraph 16 pertaining to the corrupt practices. It was in this view that paragraph 6 to 15 alone have been mentioned as being the paragraphs which required verification. The expression "the statements made by the candidate and by the said Swamy with the consent of the returned candidate" has only to be understood as referring to the allegations in paragraphs 7 to 11 and the distribution of pamphlets by Swamy, to which alone inference was made in paragraphs 13 and 14. Thus it is seen that no further facts have been mentioned in paragraph 17. What is stated therein is only by way of summing up and a comment based on facts stated in the earlier paragraphs.

19. It was elicited from P.W.3 that the petitioner was the President of the Post Man Association for the State of Madras as well as the District Postal Employees Association, Cuddalore. The petitioner admitted that P.W.3 was the Secretary of Tindivanam Post Man Union. I do not think any safe reliance can be placed upon the evidence of P.W.3, particularly, when there was no reference in the petition to what is alleged to have been stated by B. M. Swamy to P.W.3.

20. I shall now discuss the evidence pertaining to the alleged representations which had been made by the 1st respondent. P.W.8, the Village Munsif of Permandur, swore that *three days prior to the polling day* (which was on 1st March, 1957), the 1st respondent along with four or five persons came to the village and wanted him to canvass votes for the 1st respondent. P.W.8 informed the 1st respondent that the villagers appeared to be generally in favour of the petitioner, whereupon the 1st respondent told him that the petitioner was a *kurava* and that he was a dishonest man. The 1st respondent gave him a notice similar to Ex. A—1 and wanted him to distribute such notices which he took out of the sheaves of notices in his (Swamy's) hands. When P.W.8 had been to one Purushotham's tailoring shop at Tindivanam about forty days prior to his giving evidence, the petitioner met him, when he mentioned about what he saw. R.W.6 on the other hand, swore that about 10 days prior to the election, the 1st respondent came to the village with R.W.5 and Jengal Reddiar, who stood as a candidate for the State Assembly from the Gingee Constituency (Gingee Constituency was one of the areas within the Tindivanam Parliamentary Constituency) to canvass votes and that the 1st respondent did not mention anything about the petitioner or hand over notices. They also went to the house of P.W.8, where the 1st respondent talked to him. P.W.8 merely listened and said "all right". R.W.6 was cited as an additional witness without being cited in the original list of witnesses. By a separate order, which I passed on the application to examine the additional witnesses (I.A. No. 138 of 1957), I permitted his examination on 17th August, 1957 and on the same day he was examined. The learned Counsel for the 1st respondent stated that he would examine him on that day itself, because there was sufficient time left for examination of further witnesses on that day. In the circumstances, his evidence cannot be belittled merely on the ground that he was not summoned. He pays an annual land tax of Rs. 100/-. R.W.5 admitted that he was a relation of Venkatakrishna Reddiar, the founder of the C. R. C. Party, but denied that he was a member of that party. R.W.5, who gave his worth as Rs. 50,000/-, corroborated R.W.6. In fact, there was no express allegation in the petition that any corrupt practice was committed at Peramandur, though Nemi Doss of Peramandur (P.W.8) has been mentioned as a witness in both Schedules A and B. The date of the corrupt practice mentioned in Schedule A against the name of Nemi Doss is 24th February, 1957. The evidence of P.W.8 cannot be acted upon, even for the reason that the time mentioned by him (three days prior to the poll) does not tally with the time mentioned in the petition (24th February, 1957) and it was not even stated in the petition that any corrupt practice was committed in Permandur village, as the petitioner was bound to do.

21. P.W.12, who lives in Chinnababoo Samudram, swore that five or six days prior to the polling date, the 1st respondent came along with two or three others in a car and stated that the petitioner was a dishonest man, who had misappropriated lot of monies and so the villagers ought not to vote for him. He also handed over a pamphlet like Ex. A—1. P.W.12 is a Harijan, who could not be interested in the question whether the petitioner was a Vannia or not. But in the petition, his name was not included in Schedule B, (i.e.,) as one who received

a pamphlet at all—either in person or through post. P.W.12 had mentioned to the petitioner even 10 days after the election when he met the petitioner at his Press in Villupuram and told him about what he had seen. P.W.12 himself told the petitioner that he might file a case and that he (P.W.12) would depose for him. The 1st respondent swore that he never went to Chinnababoo Samudram at all. According to P.W.12 this happened about 5 or 6 days prior to the polling date (1st March, 1957) whereas 20th February, 1957 is mentioned as the date as against the name of P.W.12 in Schedule A. Apart from the omission in the petition to say that there was any corrupt practice at Chinnababoo Samudram, even the date mentioned therein does not tally with the evidence given by P.W.12.

22. P.W.14 swore that three days prior to the polling date, he saw the 1st respondent in a car and that notices similar to Ex.A—1 were dropped from the car. After going round the village (Chendur) the car stopped at the entrance of the village and the 1st respondent stated to those persons round the car, who numbered about 40 or 50, that the petitioner was not a pure Vannia, but that he was a kurava and that Gopala Goundar (P.W.1) had issued a notice to that effect. No other person has been examined to corroborate P.W.14.

23. It has to be mentioned in this context that Chendur was not specifically mentioned as a place, where any corrupt practice was committed. Only the address of P.W.14 was given as Chendur. What is even more important is that the date 22nd February, 1957 was mentioned as against the name of P.W.14 in Schedule A (item No. 13), whereas the present evidence of P.W.14 is that the incidents spoken to by him happened only three days prior to the polling day. The polling date, it may be recalled, was on 1st March, 1957. The time mentioned by P.W.14 also not tally with the date given in the petition. P.W.14 is an illiterate witness, but still had no hesitation in saying that those notices were similar to Ex.A—1. He stated that he was able to say so merely from its size and formation of letters. In Chendur, it is seen from Ex.A—6 that the 1st respondent secured 61 votes as against the petitioner, who secured 339, and the 2nd respondent 51 votes. But yet P.W.14 would say that he met the petitioner about 10 days after the elections, when he went to Tindivanam, saluted him that the petitioner asked him to which place he belonged and that P.W.14 stated that he belonged to Chendur. When questioned about the polling position in his village, P.W.14 stated that the people had become confused and divided owing to the distribution of pamphlets abusing the petitioner as a kurava and when P.W.14 was asked to depose if he was cited as a witness, P.W.14 agreed. It is thus seen that so far as the witnesses, who spoke about the alleged representations or the statements made by the 1st respondent or Swamy are concerned, their evidence does not even tally with the dates given in Schedule A. In this state of the evidence where even the places where the alleged corrupt practices were said to be committed has not been mentioned it could not be stated that any one of such instances have been proved.

24. For the first time from the witness box, the petitioner went so far as to say that about two or three days prior to the elections, there were occasions when himself and the 1st respondent could even hear each other speaking, in the villages of Mylam, Veedoor, Padirapuliur and other surrounding villages (within about a distance of a few miles). On such occasions, the 1st respondent used to say as follows:—"Kuralar Kuravan, Jadi)". It appears however to be true that the petitioner was known as "Kuralar" to the public at large, because of his association with the Tirukural Printing Press at Tindivanam. That was the title conferred on him by a congregation of pandits at Kumbakonam under the presidency of Sri K. S. Ramaswami Sastrigal, retired District Judge, in the presence of Zamindar of Udayarpalayam. He was also awarded a title of 'Tirukural Kesari' by Swami Sivananda of Rishikesam.

25. In the first place, it has to be noticed that none of the persons belonging to any of the above villages mentioned by the petitioner has been mentioned in Schedule A. Secondly, there was no reference in the petition to the petitioner having been referred to in the said manner though it is mentioned in paragraph 9 that the 1st respondent referred to the petitioner as belonging to a criminal tribe "kurava". In the context in which the allegations about the oral representations have been made in paragraphs 7 to 11 of the petition, it is clear that they embody only the contents of Ex.A—1. There is no reference to any other oral propaganda having been made, apart from what has been specifically stated in paragraphs 7 to 11, either adding to or subtracting from those contained in Ex.A—1. In these circumstances, no safe reliance could be placed on the petitioner's evidence that he had himself heard the 1st respondent referring to him in those terms. Not a single witness has been examined for the purpose of speaking to the 1st respondent having made a reference in those terms to the petitioner.

26. It was already noticed that there is absolutely no reference to any other person excepting the 1st respondent, having made the oral representations alleged in paragraphs 6 to 11 of the petition. Even in the later paragraphs, there is a reference to the printing and publication of the pamphlet by B. M. Swamy. A departure was made from the pleadings when P.W.3 was examined with reference to the oral representation said to have been made by B. M. Swamy to P.W.3.

27. (2) *The printing, publication and distribution of leaflets like Ex. A-1.*—It is worth recalling that there was an allegation only in the passive voice (paragraph 12 of the petition) that leaflets like Ex. A-1 “were circulated” and that they purported to be signed by several persons, who were non-existent, though their names closely resembled that of well-known prominent public figures. It was also stated in paragraph 12 that these leaflets were “circulated widely among the electorate in the Constituency”. In paragraph 13, a reference was made to the leaflets having been published and distributed by one B. M. Swamy of Madras with the consent of the returned candidate and his agent on 23-2-1957 and on other days in Nagalapuram Tindivanam town. In other words, there is no express allegation that the 1st respondent distributed any pamphlets himself. The petitioner rested content with stating that the pamphlets were “circulated widely among the electorate” and to those persons mentioned in Schedule B, whom, it is expressly stated, received the notices by post. Reading paragraphs 12 and 13 together, it is fairly clear that the petitioner did not refer to the 1st respondent himself distributing such pamphlets. It is not at all likely that any candidate would have personally and so openly distributed such pamphlets and thus expressed himself to the risk of being found guilty of committing a corrupt practice. Evidently the petitioner himself realised this, when he referred expressly to the circulation of the pamphlets in the passive voice (paragraph 12) and to the distribution of pamphlets only by B. M. Swamy of Madras (paragraph 13) and about whom no particulars worth the name were given. Though it was stated that it was with the consent of the returned candidate's agent, no evidence was even let in in support of that allegation. Nagalapuram alone was specified as the place where the leaflets were distributed by Swamy. No reference at all was made to any other place or places where Swamy distributed such pamphlets, as it was developed in the course of the evidence.

28. A reference to the distribution of pamphlets by the 1st respondent himself **has been made by P.W. 1**, who is an Advocate of 30 years standing at Tindivanam. He is the Municipal Chairman at Tindivanam and was President of the Cingee Taluk Board for a very long number of years. He was also a member of the South Arcot District Board, with a break of three years, till about 1954. He was also a Member of the Madras Legislative Assembly between 1952 to 1957 and pays both land tax and income-tax. He also stood for the State Legislature for the Cingee Constituency during the recent elections. He therefore withdrew the nomination, which he had filed for the Tindivanam Parliamentary Constituency. He is the 3rd respondent in the petition but remained absent. P.W.1 also stated that he received a pamphlet similar to Ex. A-1 five or six days prior to the election, but it is sufficient to note even at the outset that P.W.1 was not referred to in Schedule A. He was only referred to as a witness in Schedule B (Item No. 10) having received a postal cover containing the leaflet on 25th February '57. P.W.1, who lost in the election from the Cingee Constituency to the Madras Legislative Assembly, has filed a petition challenging the election of the returned candidate, before the Election Tribunal, Vellore. The petitioner was examined as a witness on behalf of P.W.1 before that Tribunal. P.W.1 explained that the present petitioner was not cited as his witness before the Election Tribunal, Vellore, in the first instance and that he had to cite the petitioner as an additional witness in order to clarify a question about the use of symbols. The question was whether identify slips, bearing an elephant symbol, were issued by the petitioner or by P.W.1's opponent.

29. When it was suggested to P.W.1 that the 1st respondent had been opposing him in the local elections, he finally admitted that when the 1st respondent was a candidate on the Congress ticket for the District Board Elections in 1954, a member of the Tamil Nad Toller's party founded by P. W. 1, opposed the 1st respondent and that his party candidate was defeated in the elections. Despite the important positions held by P. W. 1 and his standing both at the Bar and in public life, it could not be stated that there was no scope for rivalry as politicians between P.W.1 and the 1st respondent, or for much amity between the petitioner and P.W.1. The present petitioner started by denying when questioned in cross examination, that P.W.1 was his friend. The petitioner was confronted with his

own deposition before the Election Tribunal (marked as Ex. B-8), wherein he had admitted that P. W. 1 was his "good friend". Even after he was thus confronted, the petitioner persisted in saying that it was not correct to say that he was P.W.1's good friend and all that he must have only meant was that he knew P. W. 1. The said portion of his testimony before the Election Tribunal had therefore to be marked as Ex. B-8.

30. The petitioner was also questioned about his having stated before the Election Tribunal, Vellore that he had cited P.W.1 in this petition only for proving the fact of his having received a notice like Ex. A-1. The said portion of his deposition has been marked as Ex. B-8(a) and even when the petitioner was confronted with it, he did not give any explanation with reference to Ex. B-8(a) but persisted in stating that he did not remember if he stated as in Ex. B-8(a). The learned Counsel for the petitioner was at pains to show that it would not have been practicable for any one in charge of the case before the Election Tribunal, Vellore, to have drawn the attention of the Court about all the facts about which P.W.1 was going to speak as a witness in the present Election Petition and that so much would not have been necessary for the purpose of that case. It is plain that an effort must have been made to show to the Election Tribunal, Vellore, that the present petitioner, who was examined as P.W. 20 was not interested in P. W. 1, even as it is sought to be made out in the present petition, that P. W. 1 is not interested in the petitioner. It must therefore have been pointed out to the Election Tribunal, Vellore, that the petitioner had cited P.W.1 in the present Election Petition only for the purpose of speaking about the receipt of a pamphlet like Ex. A-1, in order to show about the present petitioner was not obliged to P.W.1. Such an impression must very probably have been sought to be created on the basis of what was stated by the present petitioner in the present petition, for the name of P.W.1, as I stated earlier, was not disclosed in the petition, as one who witnessed the 1st respondent distributing pamphlets similar to Ex. A-1 or even in Schedule A, of the petition. P.W.1's name, on the other hand, was mentioned only in Schedule B (Item 10) as one who had received a postal cover containing the leaflet on 25th February, 1957. The petitioner, thus, cannot get over the express statement made by him in Ex. B-8(a) regarding the point on which alone the petitioner had proposed to examine P.W.1 in this case. For these reasons, no safe reliance can be placed upon the evidence of P.W.1 that he saw a crowd of about 10 or 15 villagers in Grandhipuram village, which place he visited about two or three days after the receipt of the cover containing a pamphlet. The cover and pamphlet were received by him about five or six days prior to the election. P.W.1 further swore that he saw a C.R.C. van fitted with a loudspeaker through which the contents of Ex. A-1 were read out in the street behind his house and that it happened at about 8 or 8-30 p.m. on 28th February 1957.

31. The petitioner met P.W.1 four or five days prior to the election, showed him a pamphlet like Ex. A-1 and wept. But P.W.1 advised the petitioner not to do any counter propaganda, for that would give greater publicity to the leaflets. P.W.1 also admitted that after the elections, the petitioner saw him and that he (P.W.1) told the petitioner about his having seen the 1st respondent and his party distributing pamphlets like Ex. A-1 at Grandhipuram. It is only natural to expect that if these facts had been mentioned to the petitioner, the petitioner would not have failed to say so and the petitioner would not have contented himself with making the kind of luke-worm allegations that he has made in the petition. P.W.1 and the petitioner are obviously interested in each other. P.W.1 even went to the extent of saying that in Grandhipuram one Vadivelu Goundan asked him whether P.W.1 was responsible for the pamphlets and he denied it. One R. Gopala Goundar of Tindivanam was one of the signatories to Ex. A-1. P.W.1's initial is "V" and not "R" as stated in Ex. A-1. But P.W.1 stated that he was known as Gopala Goundar of Tindivanam and that any reference to Gopala Goundar of Tindivanam without any initial, it would only refer to P.W.1 and people would only associate him with the name of "Gopala Goundar, Tindivanam". There can be no doubt that P.W.1 must be well known in that area. But Vadivelu Goundar has not been examined. Nor was he even cited as a witness. I have already discussed at length the oral statements mentioned in paragraphs 7 to 11 of the petition.

32. Great reliance was placed on the evidence of P.W.2, who is said to be an Honorary First Class Railway Magistrate, Villupuram, a resident of Sendanoor, five miles from Villupuram. He swore that he received on 27th February 1957 a cover containing a pamphlet like Ex. A-1. The cover and pamphlet were marked as

Exs. A-2 and A-2(a) respectively. He also swore that a week prior to his receiving Exs. A-2 and A-2(a), he saw the 1st respondent distributing pamphlets near the Sendanoor Railway Station. With reference to the evidence of P.W.2, also, it is seen that his name was mentioned only in Schedule B (item 7), as having received a postal cover on 25th February 1957. It is seen from the postal envelope that the letter was posted and delivered on 26th February, 1957 itself, and not delivered on the 27th, as spoken by P.W.2. P.W.2 and have it that he told the petitioner, about a week after the elections, that he saw the 1st respondent distributing the pamphlets and he saw the pamphlets once again even then. He admitted that he used to see the petitioner, when he was a member of Parliament, very often in the Railway Station and that he became acquainted with the petitioner when he became an M.P. He used to meet the petitioner only casually and not on purpose. He preserved Exs. A-2 and A-2(a) because he generally preserves the letters received by him. There can be no doubt that P.W.2 received Exs. A-2 and A-2(a) by post. This was the only purpose for which he was cited in the petition as a witness. P.W.2 was not disclosed in the petition as one who had seen the 1st respondent distributing pamphlets—there was, it may be recalled, no deference at all in the petition to the 1st respondent distributing pamphlets. I am unable to attach any weight to his testimony for this reason alone I hasten to add that I attach no value to the suggestion which was made to the petitioner, and not even to P.W.2, that the petitioner had married a lady belonging to P.W.2's community.

33. I have already referred to the evidence of P.W.3 and indicated that I do not accept his testimony. The obvious defect about his evidence is that in spite of his having mentioned to the petitioner about B. M. Swamy and about the correspondence between himself and B. M. Swamy, P.W.3's name was not mentioned in the petition. If only P.W.3 had given the petitioner so much information about B. M. Swamy and referred to his going about with sheaves of pamphlets, the petitioner could not have omitted to make a reference to P.W.3. It is significant that not only P.W.3, but his relation P.W.7 also, was examined. P.W.4 is the tenant of P.W.3, P.W.5 is a friend of P.W.4. P.W.7 is a kurava by caste. B. M. Swamy is also to be a kurava and is related to P.W.7. P.W.3, being a relation of Swamy, was also a kurava. The assumption that a person would defame his own community by making such allegations, is not easy to make. It is particularly difficult to believe that such an appeal would have been made by Swamy (a kurava) to P.W.3, another kurava. Perhaps, due to the petitioner's connection with two Post Men Associations and P.W.3 being the Secretary of another association himself, P.W.3 has not only given his support to the petitioner, but has also been able to gather P.W.7, his relation, P.W.4, his tenant, and P.W.5, the friend of P.W.4, for the purpose of obliging the petitioner with such evidence.

34. P.W. 3 is related to Swamy—Swamy is the son of the brother-in-law (*Shaddagar*) of P.W.3's wife's father's brother. P.W.3's son passed S.S.L.C. and underwent electrical training at Madras and is now at Tindivanam. B. M. Swamy is stated to be a Supervisor in the Municipal Corporation, Madras and P.W.3 saw him in connection with getting a job for his son. Ex.A-3 series are the letters which passed between P.W.3 and the said B. M. Swamy, a memo containing his address was also filed into Court. I shall proceed on the footing that B. M. Swamy is not a fictitious person. In the face of P.W.3's admission that 10 or 15 days after the elections, the petitioner ascertained from P.W.3 about B. M. Swamy and the parts said to have been played by him, one would expect a reference being made to it in the petition. But P.Ws., 3 to 5 and 7 were not cited in the petition.

35. P.W.7 is a dismissed Constable who stated Swamy was also dismissed. P.W.7 swore that about 3 days prior to the said incident, he went to Chettipalayam for purchasing bulls, where two or three young boys were distributing notices similar to Ex.A-1. P.W.7 has been a bus driver, as well as a driver of bullock carts for hire. He was formerly a driver under Ramanath Goenka, whom the petitioner defeated in the former elections to the Lok Sabha by a large majority. It was suggested to P.W.7 that Venugopala Coundar, who is a bus owner and who lost to the C.R.C. Candidate for the Tindivanam State Assembly Constituency, had induced P.W.7 to give evidence in favour of the present petitioner. He denied the suggestion that his brother was employed as a bus driver in the Constituency. That P.W.3 had been responsible for P.W.7 being cited as a witness in this case, is admitted by P.W.7 himself. This is an additional circumstance, which shows that P.W.3 had been taking considerable interest in the petitioner.

36. P.W.6 is the manager of a Elementary School at Karumbakkam village who also stated that he received a pamphlet (Ex.A-4) by post on the date of the poll at 9 P.M. It can admit of no doubt that he did receive a printed pamphlet by post. It is not sufficient for the petitioner to prove that certain persons received pamphlets by post, unless it can be traced directly or indirectly to the respondent. P.W.6 was also questioned about the effect of such a notice. An objection was raised by the learned Counsel for the 1st respondent that the witness could not be asked to mention for whom he or any other wanted to record his vote and I recorded in his deposition that I would consider this question later. But in view of the fact that it has not been made out that the notices were printed or published even at the instance of a person, who was *interested* in the 1st respondent, it is needless to go into the effect of those pamphlets on the intending voters.

37. P.Ws. 4 and 5 stated that 5 days prior to the poll, they saw pamphlets like Ex.A-1, having been strewn all along the road for a distance of about half a furlong, when they went to the Railway Station that night for purchasing newspapers. There was no reference to this also in the petition. P.W.4 also stated that he met the petitioner only about a month prior to his giving evidence, obviously to get over the circumstance that no such allegation has been made in the petition. But the petitioner admitted that he met P.W.4 prior to his filing this petition. Despite P.W.4's statement that he is worth a lakh of rupees, he admitted that he was a tenant under P.W.3 and was also his neighbour. It was suggested to P.W.5 that he was a friend of P.W.4. P.Ws. 4 and 5 have obviously obliged the petitioner, on account of P.W.3. If the pamphlets were strewn about for about two furlongs along a busy road in Tindivanam Town, more disinterested persons must be available to speak about this fact. Even assuming that such pamphlets were strewn about, the evidence of P.Ws. 4 and 5 does not connect those pamphlets in any manner with the 1st respondent.

38. I have already referred to the evidence of P.W.8. He would go the length of stating that the 1st respondent himself had notices similar to Ex.A-1 and asked him to distribute them. He declined to do so, because he was a Village Munsif. He also swore that when he went the next day to the villages of Perappanthangal and Katrambakkam (hamlets of his village) he found plenty of pamphlets strewn about and some villagers were also having such notices in their hands. He also received a notice similar to Ex.A-1 in an envelope (Ex.A-5). The notice received by him was not available and so he filed the envelope alone bearing a postal seal dated 2nd March, 1957. But his further statement that he saw the 1st respondent himself going about with such pamphlets and that he was also asked to distribute such pamphlets cannot be acted upon for the reason that there was no reference to it in the petition. In order to get over this, P.W.8 stated that he met the petitioner only about 40 days prior to his giving evidence and tried to make it appear that if no reference was made to this in the petition, it was because the petitioner was not aware of that fact. But it must be borne in mind that the petitioner stated in cross-examination that he had met all the other witnesses, except P.W.5, prior to filing the petition and had ascertained the details from them. If according to P.W.8's own version, he did not meet the respondent till about 40 days prior to his giving evidence (he gave evidence on 6th August, 1957), then how did it happen that he was cited as a witness not only in Schedule B, but also in Schedule A? Perhaps in order to explain this, P.W.8 stated that one Purushothamam, a tailor, took him to the petitioner, when he met Purushothamam about 40 days prior to his giving evidence. This answer was elicited only in cross-examination and nothing was elicited in chief-examination to show that he had informed Purushothamam earlier about these details. Purushothamam has not been examined. It may be recalled that the date of the corrupt practice mentioned against P.W.8's name in Schedule A does not tally with his present evidence.

39. P.W.9 is a teacher in Erayanur, who swore that he saw B. M. Swamy distributing pamphlets at about 11 P.M. near the railway station on Sunday preceding the elections (24th February, 1957) and that two days subsequently, he saw a number of persons having such notices with them. He also got a notice by post on 2nd March, 1957. P.W.9's name also was mentioned only in Schedule B (item 1) and not even in Schedule A. He stated that he knew B. M. Swamy even earlier, because Swamy came to him along with one N. Subramaniam and Govindaswamy to ask for a teacher's job for Subramaniam, brother's son of Govindaswamy. It cannot admit of much doubt that P.W.9 is considerably interested in the petitioner. He was a member of the Study Group of the Valluvar Kazhagam of which the petitioner was a patron. M.O.1 is the photograph taken by the members of the Tindivanam Tiruvalluvar Kalvi Valarchi Kazhagam on the occasion of the staging of a drama on 23rd January, 1954. P.W.9 appears very prominently in M.O.1 next

to the petitioner, who holds a garland. P.W.9 admitted that he travelled with the petitioner to Delhi from the Central Station, Madras, on 14th April, 1957. The petitioner travelled by the second class and P.W.9 travelled in the third class. They returned together. But P.W.9 would pretend that he did not even know the purpose for which the petitioner went to Delhi and that he went to Delhi only for the purpose of seeing Delhi. He added that he went to Delhi at his own cost. Though P.W.9 would also say that he informed the petitioner about his having seen the 1st respondent distributing the leaflets in Tindivanam town near the Railway Station, there was no reference to it in the petition. On the other hand, he was cited only as having received a pamphlet by post. It is also obvious that he has taken some part even in filing the petition by going to Delhi along with the petitioner who presented the petition in person at Delhi on 16th April, 1957.

40. P.W.10 admittedly worked for the petitioner. He has no doubt been mentioned in Schedule A (item 12). He saw a big crowd at Nedi, towards the third week of February, i.e., about a week prior to the polling date. He swore that he saw the 1st respondent and Swamy distribute notices in the village of Nedi. It is important to note that he is the only witness who connects B. M. Swamy and the 1st respondent. This is obviously meant to help an inference being drawn that Swamy distributed pamphlets in other places also, only with the consent of the 1st respondent or that he was at least a person interested in the 1st respondent. Even apart from the fact that he is obviously interested in the petitioner—worked for him by going round on a cycle for no remuneration on several days, paying the hire for the cycle himself—there is no reference in the petition to the 1st respondent and Swamy having distributed such pamphlets together and having thus committed a corrupt practice at Nedi or in any other place. It was suggested to him that those villages where P.W.10 worked were the stronghold of the Congress, where the 2nd respondent, the Congress candidate, secured a large number of votes. This suggestion receives support from the following voting results of the two booths of Pathirapuliur, where the 2nd respondent got the maximum votes 185 and 161, as against the petitioner's 51 and 65. The 1st respondent got 140 and 87 votes.

41. Even the address of P.W.10 was given as Chendur in Schedule A. It could not be therefore even suggested that there was even any remote reference in the petition to any corrupt practice being committed either by the 1st respondent or by Swamy or by both at Nedi. P.W.10 went to the extent of saying that the voters came to beat him when he canvassed votes for the petitioner, because of the publication and distribution of pamphlets. This is an untenable exaggeration. He did not admittedly give any complaint against any such person.

42. P.W. 11 is a resident of Periathachoor, who swore that notices like Ex. A-1 were distributed by the 1st respondent, in his village, three days prior to the polling day. P.W. 11 is No. 9 in Schedule A of the petition, 28th February 1957 is said to be the date on which representations regarding the petitioner were made to him by the 1st respondent. P.W. 1 did not speak about any oral representation made by 1st respondent. He only spoke about the distribution of the pamphlets by the 1st respondent. His evidence also does not fit in with the allegations made in the petition. He stated that he merely received some pamphlets and distributed them to the people and read one of them, which was an attack on the petitioner. He claimed that he worked for the 1st respondent as an agent in Periathachoor booth. He admitted that his father-in-law was a distant *pangali* of the petitioner. Hence it is not likely that he would have worked as a polling agent for the 1st respondent. It was no doubt suggested to P.W. 11 that one Shanmugham son of Sadasiva Goundar (who was present in Court) was the polling agent for the 1st respondent in Periathachoor booth. The said Shanmugham has not been examined by the 1st respondent. P.W. 11 stated that Shanmugham, who was present in Court, was the Clerk of the Panchayat Board Office and therefore he could not have acted as a polling agent. But in cross-examination P.W. 11 admitted that he was asked by one Doraiswami Goundar, the Panchayat Board President, to be the polling agent, and that he could not be sure without seeing the list which Doraiswami maintained, for whom he worked as a polling agent. After stating that he could not have worked for the 2nd respondent, he finally wound up as follows:—

"I am sure I could not have been an agent for the petitioner. I may have been agent for the 1st respondent."

He endeavoured to make it appear that the support which the petitioner formerly had in that area, was considerably weakened on account of such publication. But he denied knowledge of the voting position. Even regarding the distribution of pamphlets at Periathachoor, there was no specific allegation in the petition that any corrupt practice was committed at Periathachoor by the 1st respondent (i.e.,) by distributing such pamphlets.

43. I have already discussed the evidence of P.Ws. 12 and 14 and shown how their evidence is not acceptable.

44. P.W. 13, who is a teacher at the District Board School at Narayur, swore that about 10 days prior to the polling day, he went to Valavanoor, to attend a meeting addressed by M. G. Ramachandran, a cinema star. It is stated that the meeting was convened on behalf of the Dravida Munnetra Kazhagam and C.R.C. According to P.W. 13, the 1st respondent was sitting on the platform, reading a pamphlet similar to Ex. A-1 and at the end of the meeting, a number of boys distributed such pamphlets. P.W. 13 also swore that he received such a notice by post and that he did not preserve. P.W. 13 was mentioned in the petition (Schedule B) as one who had only received a notice by post and there was no indication about the other facts spoken to by him. He admitted that he was a sympathiser of the Dravida Kazhagam, but denied the suggestion that he worked for the petitioner or that he was a member of the Dravida Kazhagam party. He stated that he did not take part in the activities of the party, because he was a teacher. He feigned ignorance of the fact whether the D.M.K. was opposed to the Dravida Kazhagam in the recent elections in all the constituencies. But finally he admitted that he attended a meeting addressed by Guruswamy, the leader of the Dravida Kazhagam, at Valavanur in connection with the present election, organised by the Dravida Kazhagam, opposing the candidature of the 1st respondent and Govindaswami, who stood as C.R.C. candidates for the Lok Sabha and State Assembly respectively. P.W. 13 voluntarily met the petitioner when he went to the petitioner's house about 10 days after the elections for attending a meeting of the Teacher's Co-operative Bank. P.W. 13 told the petitioner about what he had seen when the petitioner asked him about the pamphlets and also agreed to depose about it in Court, in the event of the petitioner filing a petition challenging the 1st respondent's election. In spite of this, there was absolutely no reference in the petition to the 1st respondent distributing such notices or being present at the meeting at Valavanoor addressed by M. G. Ramachandran, the cinema star. R.W. 7 on the other hand stated that he attended the meeting addressed by M. G. Ramachandran. R.W. 7 was allowed to be cited as an additional witness, because there was no reference in the petition to the meeting at Valavanur or to any corrupt practice having been committed there. According to R.W. 7, the meeting took place about four weeks prior to the polling date. There is no other evidence, excepting the oral testimony of P.W. 13, to the effect that the meeting took place about 7 or 8 days prior to the polling date. The 1st respondent himself stated that he never attended the meeting addressed by M. G. Ramachandran at Valavanoor. In cross-examination, he stated that the meeting took place about 10 or 15 days prior to the polling date. Since he did not attend the meeting, he could not be expected to say anything precisely about the date of the meeting. R.W. 7 stated that he was sitting near the platform and yet did not see the 1st respondent. R.W. 7 also swore that no pamphlets like Ex. A-1 were distributed. That meeting was arranged at short notice. Hence, no notices were published, prior to the meeting, announcing the meeting. It was stated that M. G. Ramachandran had come to Villupuram and so he had been brought to Valavanoor. R.W. 7 swore that he is worth Rs. 20,000/-. He denied the suggestion that he was a member of the C.R.C. party or that he worked for the 1st respondent, even though he admitted that he resigned his membership of the Congress prior to the elections. I do not consider, that in the circumstances, it is at all safe to rely on the evidence of P.W. 13.

45. The 1st respondent, apart from denying the allegations on oath, examined some witnesses to disprove some of the acts mentioned in the petition. The evidence in the very nature of things, was of a negative character and I do not find the need to refer to the evidence of the 1st respondent or his witnesses at any length.

46. The onus of making out the corrupt practices alleged in the petition lies entirely on the petitioner. The petitioner was cross-examined at great length about the various omissions in the petition. With reference to what he had known from the witnesses, it is well to set out his evidence in his own words:—

"Excepting P.W. 5, I had met all the other witnesses examined by me in this case, before I filed the election petition. I ascertained from them the details of what was spoken by the 1st respondent and to what places he was accompanied by B. M. Swamy and the day or dates when the 1st respondent himself singly or along with others visited the various places."

Having regard to this admission, the absence of any reference in the petition to even the essential details which were sought to be proved only at the trial, such omissions are fatal to the petitioner's case. The petitioner admitted that the

petition was drafted in the office of Sri Mohan Kumaramangalam, Barrister, Madras, and that he gave him instructions for drafting this petition. He saw the draft and the fair-copy of the petition, which were typed in Madras itself. He admitted that he read the petition carefully and then signed it. He had not stated in the petition the places where B. M. Swamy distributed pamphlets, to whom he gave them and at what places he distributed them along with the 1st respondent. The distribution of the pamphlets by Swamy on 23-2-1957, at Nagalapuram, alone has been mentioned. The petitioner asserted that he told Sri Mohan Kumaramangalam about all the details. He added that he did not read the Acts or the Rules before filing the Election Petition and that he was not aware that before filing the Election Petition it was necessary to give details of corrupt practices, the places where they were committed and the time when they were committed. But it is impossible to accept the petitioner's case that he mentioned the details to his lawyer, for if they had been mentioned, they would have been specifically mentioned in the petition, as required by Section 83(b) of Act 43 of 1951.

47. In spite of the petitioner's assertion that when P.W. 3 mentioned the name of B. M. Swamy, he was able to place him as one, who was dismissed from Police Service along with his brother, the petitioner would say that he did not refer to B. M. Swamy in greater detail in the petition than he did, because he wanted to make sure about it. Nagalapuram was a part of Tindivanam and within the Tindivanam Municipal limits. When the petitioner's attention was drawn to paragraph 13 of the petition that Nagalapuram alone, but not other places, was mentioned by him, as the place where B. M. Swamy distributed pamphlets, he realised that it was an omission, but was unable to explain that omission. He also admitted, after seeing paragraph 17 of the petition, that even there was no reference to any other place, which also he conceded to be an omission. He admitted that he did not even mention to his lawyer about both the 1st respondent and B. M. Swamy distributing pamphlets in Mylum, Veedur and Padirapuliur, because he had a lot to say to his lawyer. He also admitted that he did not know personally about the printing of the pamphlets by B. M. Swamy and that it was only his surmise. He admitted that he did not himself see B. M. Swamy distributing the notices in Nagalapuram but that the reference was made to Nagalapuram in paragraph 13 was based upon the information he gathered from P.Ws. 3, 7 and 9. It was already noticed that P.Ws. 3 and 7 were not even cited as witnesses in Schedules A or B and that P.W. 9 was cited only in Schedule B and not in Schedule A. He admitted that he had not referred, in the Schedules, to any corrupt practice by the 1st respondent and Grandhipuram or in Kurvanbakkam village. He also admitted that he had not mentioned the names of persons to whom any notice was handed over personally, i.e., as distinguished from receiving the same by post. Specific objection was taken in the counter statement on the ground that the petitioner had not given sufficient details of the alleged corrupt practices as the petitioner was bound to. In spite of such objection, the petitioner did not even apply to have the petition amended by giving particulars of the alleged corrupt practices. In most instances, even where there is some reference, however slender or remote, in the petition, the evidence let in does not tally with them. By framing the petition as he has done and yet making these admissions, the petitioner really has put himself out of Court regarding the alleged corrupt practices committed by the 1st respondent or by Swamy or by both.

48. It has not been satisfactorily proved that the 1st respondent or B. M. Swamy or any of his agents or other persons with the consent of the 1st respondent or his election agent has been guilty of any corrupt practice either under Sections 123(3) or 123(4) of the Act. Excepting the reference to B. M. Swamy, there is no other allegation in the petition that any one *interested* in the 1st respondent has committed any corrupt practice. The further question, whether as a result of such corrupt practice being committed by some one *interested* in the 1st respondent, the result of the election has been materially affected, does not even arise for consideration.

49. In so far as the latter question is concerned, the petitioner alleged that he had succeeded in the previous elections as against a powerful opponent like Ramanath Goenka by a large majority and that but for such propaganda by at least some one interested in the 1st respondent, the result of the election would have been different. In the first place, it has got to be noticed that while it is evident that pamphlets like Ex. A-1 were published and circulated, just prior to the elections, there is no proof that the 1st respondent or his agent or even any one interested in the 1st respondent has been responsible for the same. In this connection, it is mentioned by the petitioner himself that even the 2nd respondent (P. W. 1) received a notice of that kind and the 2nd respondent was

cited as one of the persons mentioned in schedule B (item 8). There was clearly no purpose in the 1st respondent or anyone interested in him sending a pamphlet to the 2nd respondent. It is not even suggested that the same was done as a camouflage and to make it appear that it was not done by the 1st respondent or any one interested in him. There can be little doubt that at least P.Ws. 1, 2, 6 and 8 received such notices by post. The 1st respondent stated in his counter and also on oath that he also received a similar petition, though the same was not produced into Court. It is quite evident that some person, who was mimically disposed towards the petitioner had been responsible for printing and publishing it, though not in the manner stated by the petitioner and is witnesses. Ex. A-1 only stated that the voters should not cast their votes for the petitioner and very cleverly managed to refrain from saying for whom the votes should be cast. The specific request in Ex. A-1 was that the voters may vote for the most suitable candidate. There is no inherent indication about the author or at whose instance the pamphlets like Ex. A-1 were printed and circulated. From the way in which the allegations were made regarding the pamphlets in paragraphs 12 and 13, it is a fair inference that the petitioner himself had no personal knowledge about who was responsible for it. During the cross-examination of the petitioner, it was elicited that there were also some others who were not well disposed towards him and had published pamphlets against him in the past. It is needless to refer to them specifically. The pamphlets, like Ex. A-1, were directed against the petitioner. This circumstance no doubt calls for sympathy in favour of the petitioner. The leaflets are *ex facie* defamatory in character. The contents of the pamphlets were not sought to be justified. Though the pamphlet was directed against the petitioner, it has not been made out that they were so caused to be printed and published by the 1st respondent, or his election agent, or by any one with the consent of the 1st respondent or his election agent or even any one interested in the 1st respondent. In the absence of satisfactory and reliable proof to bring home the alleged corrupt practices to the 1st respondent or his agent either under Section 123(3) or 123(4) of Act 43 of 1951, the petition has to fail. In view of the above discussion, all the three issues are found against the petitioner.

50. In the result, the petition fails and is dismissed. The petitioner will pay the 1st respondent alone costs of this petition. Vakil's fee is fixed at Rs. 250.

Dictated to the Shorthandwriter and pronounced by me in open Court, this the 31st day of August, 1957.

(Sd.) S. RANGARAJAN,

Member, Election Tribunal.

(District and Sessions Judge, Chingleput).

Petitioner's Exhibits

A-1/—Printed pamphlet (marked Exhibit A before the Commission)—warning to 41,600 voters of the 517 polling stations in Tindivanam—regarding petitioner.

A-2/—Printed pamphlet similar to A-1 (produced by P. W. 2).

A-2(a)/26-2-57 Envelope addressed to D. Shanmugham, First Class Railway Magistrate, Villupuram Junction.

A-3/12-11-1956 Post Card by B.M. SWAMI to Authimoola Naicker P. W. 3.

A-3(a)/6-11-1956 Envelope addressed to P. Authimoola Naicker (P. W. 3) Postman Tindivanam.

A-3(b)/2-10-56 Envelope addressed to P. Authimoola Naicker P. W. 3) Postman, Tindivanam.

A-4/1-3-57 Envelope addressed to "THE SCHOOL MANAGER, Karuvanpakam, Tindivanam".

A-5/2-3-57 Envelope addressed to the Village Munsif, Peramandur, Tindivanam.

A-6/24-8-57 Copy of consent statement of Form No. 22.

Respondents' Exhibits

- B-1/—Printed pamphlet.
- B-2/—Printed pamphlet.
- B-3/—Printed pamphlet.
- B-4/—Printed pamphlet.
- B-5/—Printed pamphlet.
- B-6/—Printed pamphlet.
- B-7/—Printed pamphlet.

B-8/1-8-1957 Portion marked at page 3 of the certified copy of the deposition of petitioner herein in Election Petition No. 17 of 1957 before the Election Tribunal, Vellore.

B-8(a)/1-8-1957 Portion marked at page 8 of the certified copy of the deposition of petitioner herein in Election Petition No. 17 of 1957 before the Election Tribunal, Vellore.

P-9/1-3-57 Printed pamphlet.

Material Objects marked in the Case

M.O.(1):/23-1-54 Photograph taken by the members of Tindivanam Thiruvalluvar Kalai Valarchi Kazhagam on the occasion of the staging of a drama on 23rd January, 1954.

Petitioner's Witnesses

1. Shri V. Gopala Goundar.
2. Shri Shanmugham.
3. Shri Authimoola Naicker.
4. Shri Sivaprakasa Mudaliar.
5. Shri Atham Sahib.
6. Shri Velayudha Mudaliar.
7. Shri Venkatesa Naicker.
8. Shri Nemi Doss.
9. Shri Subramaniam.
10. Shri Kannayeram.
11. Shri Ramakrishna Goundar.
12. Shri Pazhani.
13. Shri Janakirama Udayar.
14. Shri Natesa Goundar.
15. Shri Thirukural Munuswami (Petitioner).

Respondents' Witnesses

1. Shanmugham (1st Respondent).
2. Veerasami Reddi.
3. Doraiswami Goundar.
4. Pazhani Mudaliar.
5. Subbarama Reddiar.
6. Vrishabanatha Nainar.
7. Subbaraman.

(Sd.) S. RANGARAJAN,
Member, Election Tribunal.
(District and Sessions Judge, Chingleput).

[No. 82/92/57]

By Order,
A. KRISHNASWAMY AIYANGAR, Secy.

